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1021/0205  
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EXAMINER

DAYALA, C

ART UNIT	PAPER NUMBER
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1751

DATE MAILED:

02/03/79

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

# Office Action Summary

Application No.

08/996889

Applicant(s)

Cavadioli et al

Examiner

Sayala

Group Art Unit

1761

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

## Period for Response

A SHORTENED STATUTORY PERIOD FOR RESPONSE IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a response be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for response specified above is less than thirty (30) days, a response within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for response is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to respond within the set or extended period for response will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

## Status

- ☐ Responsive to communication(s) filed on \_\_\_\_\_.
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- ☒ Claim(s) 1-20 is/are pending in the application.  
Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- ☒ Claim(s) 1-20 is/are rejected.
- ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- ☐ Claim(s) \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119 (a)-(d)

- ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
  - ☒ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been received.
  - ☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.
  - ☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

## Attachment(s)

- ☒ Information Disclosure Statement(s), PTO-1449, Paper No(s) 3+6
- ☒ Notice of References Cited, PTO-892
- ☒ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other \_\_\_\_\_

Office Action Summary

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1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-9 are rejected under 35 U.S.C. 102(a) as being anticipated by WO 96/08261.

The patent discloses starch that has been modified by amylolysis acting as a carrier for probiotic microorganisms, used in compositions such as breakfast cereals, wherein the product can also be extruded to form a granular product, which in case of cereal would be a flake, and this is inherent. Note the use of fat with the starch and microorganism. See the examples where sugar and milk solids are combined. See page 7, line 30+ to page 8, lines 1-10. See page 8, line 35, page 6, lines 5-7, claim 4 (compare to page 4, line 25 in the specification). With respect

to claims 4 and 9, see page 5, lines 4-27. With respect to claim 6, see page 3, lines 15+.

4. Claims 1-20 is rejected under 35 U.S.C. 103(a) as being unpatentable over WO 96/08261 in view of Cox (US Patent 5006361).

'261 is as discussed above. It does not show using such a product as a pet food or pet cereal. Cox discloses lipid pellets for animal feed that can contain herbicides, fertilizers, etc in an alginate gel matrix, which is extruded. See col. 7, lines 15-25, 55-65. In fact, the patentee teaches the modification of such lipid pellets into kibbles and the advantage of doing such at col. 21, lines 10-30. It would have been obvious to one of ordinary skill in the art who is looking to feed pets or animals with the foodstuff disclosed in '261 to combine the teachings and advantages of Cox's invention so that lipid pellets or kibbles containing the ingredients of '261, which is so similar to Cox can be incorporated as pet food.

5. Claims 1-3, 6-8 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Suzuki et al (US Patent 5283059).

Claim 1 is exemplary. See col. 4, lines 5-10 for gelatinizing the starch component. See also col. 3, lines 50+.

4. Claims 1-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Suzuki et al in view of Cox and Kvanta et al. (US Patent 4943437).

Suzuki et al is as discussed above. The patent does not show the elements of claims 4,5 and 9. Cox discloses lipid

pellets for animal feed that can contain herbicides, fertilizers, etc in an alginate gel matrix, which is extruded. See col. 7, lines 15-25, 55-65. In fact, the patentee teaches the modification of such lipid pellets into kibbles and the advantage of doing such at col. 21, lines 10-30. It would have been obvious to one of ordinary skill in the art who is looking to feed pets or animals with the foodstuff disclosed in Suzuki et al to combine the teachings and advantages of Cox's invention so that lipid pellets or kibbles containing the ingredients of the feed of Suzuki et al, which is so similar to Cox can be incorporated for its benefits. Kvant et al is applied herein to show that it was known in the art at the time the invention was made to supply such biologically active material as bacteria on foodstuff by using lipid and pelletizing, extruding, etc. as claimed herein in claim 5.

5. Claims 1-9 are rejected under 35 U.S.C. 102(b) as being anticipated by EP 0159891.

See page 2, lines 5-10 for the probiotic microorganism with starch. See page 5, lines 15-30. See page 6, lines 10-15 for the use of lipid. See page 7, lines 1-10 and page 1.

6. Claims 1-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over EP 0159891 in view of Cox and Kvant et al. (US Patent 4943437).

'891 is as discussed above. It does not show using such a product as a pet food or pet cereal. Cox discloses lipid pellets for animal feed that can contain herbicides, fertilizers, etc in

an alginate gel matrix, which is extruded. See col. 7, lines 15-25, 55-65. In fact, the patentee teaches the modification of such lipid pellets into kibbles and the advantage of doing such at col. 21, lines 10-30. It would have been obvious to one of ordinary skill in the art who is looking to feed pets or animals with the foodstuff disclosed in '891 to combine the teachings and advantages of Cox's invention so that lipid pellets or kibbles containing the ingredients of '891, which is so similar to Cox can be incorporated as pet food. Kvanta et al is applied herein to show that it was known in the art at the time the invention was made to supply such biologically active material as bacteria on foodstuff by using lipid and pelletizing, extruding, etc.

7. Claims 1-3, 6-8 are rejected under 35 U.S.C. 102(b) as being anticipated by WO 91/17672.

The invention uses oat bran among others (see claim 5) that is also high in fiber, fermented and combined with microorganisms. See the claims. The food product is then freeze dried and is mixed with milk, juice, etc. as a ready-to-eat product (example 9). The product can contain milk, sugar, etc, see page 13, lines 1-10.

8. Claims 1-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO 91/17672 in view of

The WO '672 patent is as discussed above. The patent does not show the elements of claims 4,5 and 9. Cox discloses lipid pellets for animal feed that can contain herbicides, fertilizers,

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etc in an alginate gel matrix, which is extruded. See col. 7, lines 15-25, 55-65. In fact, the patentee teaches the modification of such lipid pellets into kibbles and the advantage of doing such at col. 21, lines 10-30. It would have been obvious to one of ordinary skill in the art who is looking to feed pets or animals with the foodstuff disclosed in '672 to combine the teachings and advantages of Cox's invention so that lipid pellets or kibbles containing the ingredients of the feed of Suzuki et al, which is so similar to Cox can be incorporated for its benefits. Kvanta et al is applied herein to show that it was known in the art at the time the invention was made to supply such biologically active material as bacteria on foodstuff by using lipid and pelletizing, extruding, etc. as claimed herein in claim 5.

Any inquiry concerning this communication should be directed to Examiner **C. Sayala** at **Group 1761**, telephone number (703) 308-3035. Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0661. The fax phone number for this Group is (703)305-3559.



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Primary Examiner  
Group 1761.